



OPERATIONAL BULLETIN: OBO-2022-007

TITLE: Options under the *Immigration and Refugee Protection Act* (IRPA) and Regulations when dealing with Foreign Nationals subject to Emergency Measures Regulations

Date of Issue: 2022-02-15	Mode(s): All	Target Audience: All CBSA officials administering and enforcing IRPA	Area of Interest: National
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Details:

This Operational Bulletin (OB) is to provide guidance to CBSA officials on the options under the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR) when **examining** foreign nationals (FNs) seeking entry or already in Canada and who may be subject to *Emergency Measures Regulations*. This OB is to be read in conjunction with OB OBO-2022-008, entitled [Prohibition on Entry for Foreign Nationals Seeking to Participate in a Prohibited Public Assembly](#).

Background:

On February 15, 2022, the Governor in Council made the *Emergency Measures Regulations*, under the [Emergencies Act](#), prohibiting public assembly of persons that may reasonably be expected to lead to a breach of the peace which would result in:

- the serious disruption of the movement of persons and goods or the serious interference with trade;
- the interference with the functioning of critical infrastructure; or
- the support of the threat or use of acts of serious violence against persons or property.

These measures also prohibit the entry of foreign nationals (unless an exemption applies) who intend to participate in or facilitate assemblies prohibited by these Regulations.

Port of Entry Examinations

CBSA officers working at the primary inspection line (PIL) should refer to secondary all foreign nationals who, through their own statements, or other verbal and non-verbal indicators, demonstrate an intent to be entering Canada to participate in or facilitate in activities prohibited by the *Emergency Measures Regulations*.

Once in secondary, officers will conduct a progressive examination of the foreign national to determine their admissibility, as well as **accompanying** goods.

All foreign nationals who, on a balance of probabilities, are seeking entry to Canada for the purpose of participating in, or facilitating, a prohibited public assembly, are prohibited from entry.

In reaching their decision, CBSA officers should consider statements made by the foreign national, and documentation and goods found in their possession, which may be indicative of intent to participate in prohibited activities.

This may include finding items such as: baseball bats, pipes, gas masks/goggles, protective vests, rope, handcuffs/handcuff keys, gas canisters, slingshots, etc. Items of concern or interest can also include maps or written documents and instructions for directing foreign nationals to specific activities.

If, during the course of a secondary examination, and following [CBSA policies for the inspection and examination of electronic devices](#), CBSA officers come across information (e.g., emails, text messages, photos) which may be related to prohibited public assembly activities, officers may use them as evidence to support their decision that the foreign national is prohibited from entry.

Importantly, officers should be aware that not all public assemblies are prohibited under the regulations. Rather, the regulations target those prohibited public assemblies, which may "reasonably be expected to lead to a breach of the peace" by:

- (a) the serious disruption of the movement of persons or goods or the serious interference with trade (e.g., assemblies at, or near, POEs which impede the free flow of traffic through a land POE)
- (b) the interference with the functioning of critical infrastructure (see *OB Prohibition on Entry for Foreign Nationals Seeking to Participate in a Prohibited Public Assembly* for a list of what constitutes critical infrastructure). This would include assemblies at public or government buildings, hospitals or other health clinics where COVID-19 vaccines are administered, etc.
- (c) the support of the threat or use of acts of serious violence against persons or property (e.g., any public demonstration for any cause and at any location which calls for acts of violence or where there is a threat of violence against persons or property). In these cases, travellers may be in possession of literature or pamphlets which call for violence or violent acts.

Foreign National Arriving from the United States

Foreign nationals arriving from the United States who fall under this category of persons will be subject to Direct Back provisions in IRPR.

Where the foreign national is arriving from the US, the Direct Back under R41(d) should be used. Issuing an Allowed to Leave is only an option after a person has been directed back under R41(d) and subsequently seeks to enter while they are still prohibited from entering under the EMR, at which time the Minister's Delegate (MD) may also issue an Allowed to Leave.

Note: A Direct Back should not be used in conjunction with an Entry for Further Examination (A23). A traveller who is directed back but, due to flight availability, is not able to leave forthwith, should be issued an A23 with terms and conditions. Direct Back cannot be used once a decision is made. If an A23 is used, the officer should complete a new examination on their return to the airport and choose the best available option.

Foreign National Arriving from a Country Other than the United States

Foreign nationals arriving from a country other than the United States are not subject to Direct Back provisions, and should be counseled by CBSA officials of the prohibition on travel, and offered voluntary withdrawal of their application to enter Canada pursuant to section 42 of IRPR.

If the FN does not wish to withdraw their application to enter Canada, the officer should first consider if any IRPA inadmissibility grounds exist and pursue appropriate enforcement action. Otherwise, the officer should give a second opportunity, and explain to the FN the consequences of entering Canada to participate in or facilitate a prohibited public assembly. Subsection 10(2) of the EMR states contravention of the regulations **is an indictable offence that carries a fine of up to \$5,000 or a term of imprisonment of up to five (5) years, or both.**

If the FN continues to refuse to accept the opportunity to withdraw their application, the officer will inform them that they may be arrested for contravening the EMR and referred to the local police of jurisdiction. The officer will then offer to the FN to withdraw their application a third and final time.

If the FN continues to refuse, the officer may arrest the traveller under s.163.5 of the *Customs Act* for committing an offence under subsection 10(2) of the EMR. The officer will follow arrest/detention procedures and subsequently refer the case to the police force of jurisdiction.

If the police force of jurisdiction elects not to attend, and no other admissibility concerns apply, the foreign national is to be released.

Note: Arresting a person under the EMR is not an offence for which BSOs can apply 36(2)(d) of IRPA. Travellers who are arrested under the EMR but who are not charged by the police force of jurisdiction, cannot be found inadmissible for committing an offence on entering Canada.

Actions required by officers and Minister's Delegates administering and enforcing IRPA:

- Pursuant to paragraph **183(1)(d)** of the IRPR, all foreign nationals whose entry into Canada is authorized are automatically subject to the condition upon entry that they must comply with any order or regulation made under the *Emergencies Act*.
- Where a BSO has allowed entry of any foreign national under **A23**, the BSO **must** impose the **additional** condition on the foreign national pursuant to **R43(1)(e)** to comply with all requirements imposed on them by an order or

regulation made under the *Emergencies Act*.

- If it is determined that a foreign national who is subject to conditions imposed under R183(1)(d) or R43(1)(e) has been charged and/or convicted for having contravened an order or regulation made under *Emergencies Act* or its regulations, an officer may proceed to write an inadmissibility report under A44(1) for A41(a) non-compliance with a requirement [imposed under either R183(1)(d) or R43(1)(e), as applicable].

Officers should co-ordinate with local law enforcement agencies responsible for enforcing the *Emergencies Act* and its regulations to secure proof of charges or conviction.

- While IRPA and the IRPR do not require charges and/or a conviction in order to make a finding of inadmissibility for non-compliance with R183(1)(d) or R43(1)(e), as a matter of policy IRPA enforcement is normally expected to be **complementary to**, and **follow**, enforcement of the order or regulation made under *Emergencies Act* by the local law enforcement, and this inadmissibility should generally only be pursued where there is *prima facie* documentary evidence from the law enforcement authorities of the foreign national's non-compliance.
- Where more than one inadmissibility applies, officers shall exercise appropriate discretion in determining which inadmissibility/enforcement action would best serve the objectives of IRPA.

Note: A conviction, including a fine, for contravention of an order or regulation made under the *Emergencies Act* constitutes a conviction for the purposes of section 22.1 of the IRPR; however, a fine or a conviction imposed under a **municipal or provincial bylaw** does not constitute a conviction under this section and may not form the basis for inadmissibility for non-compliance under A41(a).

- If proceeding with an inadmissibility report, officers should assess whether other inadmissibility grounds under IRPA are applicable, in addition to non-compliance under A41(a). It is also open to officers to consider inadmissibility under section 36 of IRPA, for those foreign nationals who **have been convicted** of an indictable offence, including any offences under the EMR.
- The A44(1) report(s) shall be referred to the MD and shall not be referred to the Immigration Division pursuant to **R228(c)(v) or R228(1)(c)(vii)**. If the Minister's Delegate (MD) finds the report(s) to be well-founded and decides to issue a removal order following the review under A44(2), the MD will make the applicable removal order against the foreign national pursuant to R228.
- When a CBSA officer encounters evidence when administering or enforcing program legislation, or receives a tip of non-compliance by a foreign national with conditions imposed under an order or regulation made under the

Emergencies Act, the officer may, as appropriate, refer those cases to the appropriate authorities for further investigation and potential enforcement action.

- CBSA officers are not designated to enforce, nor are they peace officers for the purpose of enforcing, the *Emergencies Act* and, as such, are not to conduct proactive investigations into gathering of the evidence for a contravention of the *Emergencies Act* or directly engage in enforcement operations at prohibited public assemblies.

Additional Information:

- Additional guidance on writing A44(1) reports and Minister's Delegate review under A44(2) can be found in [ENF5](#) and [ENF6](#) manual, respectively.

Regional Management:

Regional supervisors and managers will ensure that the above instructions are implemented immediately.

Contact Information:

Any questions regarding this bulletin should be directed to the following email address:

Inland Enforcement Officers:

Questions related to these instructions can be directed to the Investigations Unit:
[CBSA-ASFC Investigations-Programs](#)

Port of Entry officers: If you have any questions, please forward them through the regional Corporate, Programs and Integration Management Divisions, which (if required) will then send an email to the Traveller Operations Division's generic inbox:
[CBSA-ASFC Ops Travellers-Voyageurs](#)

Approved by:

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Effective Date: 2022-02-15

Updated: 2022-02-22

Additional bulletins:

http://atlas/ob-dgo/res/bulletins/bs0-asf/index_eng.asp

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OPERATIONAL BULLETIN: OBO-2022-008

TITLE: Prohibition on Entry for Foreign Nationals Seeking to Participate in or Facilitate a Prohibited Public Assembly

Date of Issue: 2022-02-15	Mode(s): All	Target Audience: All CBSA officials administering and enforcing IRPA	Area of Interest: National
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Details:

This Operational Bulletin (OB) is to notify CBSA officials of the new *Emergency Measures Regulations*, made under the *Emergencies Act* (EA), and their application when examining foreign nationals seeking entry to Canada or dealing with those foreign nationals already in Canada. Pursuant to the regulations, unless exempted, entry is prohibited for foreign nationals who seek to enter Canada for with the intention to participation in or facilitate a prohibited.

For details on the application of the regulatory measures within the *Immigration and Refugee Protection Act* (IRPA) enforcement context, please refer to the Operational Bulletin OBO-2022-007 entitled: [Options under the Immigration and Refugee Protection Act \(IRPA\) and Regulations when dealing with Foreign Nationals subject to the Emergency Measures Regulations](#).

For complete text of the regulations, please refer to the [Canada Gazette](#).

Background

On February 15, 2022, the Governor in Council made the [Emergency Measures Regulations](#), under the [Emergencies Act](#), prohibiting all individuals from participating in or facilitating a public assembly that may reasonably be expected to lead to a breach of the peace by:

- the serious disruption of the movement of persons or goods or the serious interference with trade;
- the interference with the functioning of critical infrastructure; or
- the support of the threat or use of acts of serious violence against persons or property.

Critical infrastructure is defined as:

- (a) airports, aerodromes, heliports, harbours, ports, piers, lighthouses,

- canals, railway stations, railways, tramway lines, bus stations, bus depots and truck depots;
- (b) infrastructure for the supply of utilities such as water, gas, sanitation and telecommunications;
- (c) irrigation works and pipelines;
- (d) international and interprovincial bridges and crossings;
- (e) power generation and transmission facilities;
- (f) hospitals and locations where COVID-19 vaccine are administered;
- (g) trade corridors and international border crossings, including ports of entry, ferry terminals, customs offices, bonded warehouses, and sufferance warehouses.

The regulations further specify that a person must not travel to or within an area in which a prohibited assembly is being held, and must not cause a minor (under the age of 18) to travel to or within such an area.

Additionally, pursuant to the regulations, a foreign national must not enter Canada with the intent to participate in, or facilitate, a prohibited assembly.

All foreign nationals who are authorized to enter Canada are required to comply with the regulations (i.e., not participate in, or facilitate, a prohibited public assembly) as part of their conditions for being authorized entry to Canada, in accordance with paragraph 183(1)(d) of IRPR. Similarly, foreign nationals who are authorized entry for further examination pursuant to section 23 of IRPA are also required to comply with the regulation, in accordance with R43 of IRPR.

The regulations also trigger transporter obligations pursuant to 258.1 of IRPR, requiring commercial transporters to refuse to carry foreign nationals who fall under this category of persons.

Note: Persons who enter Canada by right (such as Canadian citizens, permanent residents and those registered under the *Indian Act*) are exempt from the prohibition of entry.

The new regulations do not provide any new powers to officers, including those of designated officers to arrest under the *Customs Act*.

In circumstances when an officer encounters evidence that a contravention of the *Emergency Measures Regulations* has occurred, CBSA officers are advised to immediately contact their Regional Intelligence Officer who may share information with the appropriate law enforcement agency if it is in accordance with existing legal authorities.

Definition – Prohibited Public Assembly

A person must not participate in a public assembly that may reasonably be expected to lead to a breach of the peace by:

- (a) the serious disruption of the movement of persons or goods or the serious interference with trade;

- (b) the interference with the functioning of critical infrastructure; or
- (c) the support of the threat or use of acts of serious violence against persons or property.

Exemption – Prohibition on Entry

The following foreign nationals are exempt from the prohibition on entry if they are:

- (a) a person registered as an Indian under the *Indian Act*;
- (b) a person who has been recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) IRPR who is issued a permanent resident visa under subsection 139(1) of those regulations;
- (c) a person who has been issued a temporary resident permit within the meaning of subsection 24(1) of IRPA and who seeks to enter Canada as a protected temporary resident under subsection 151.1(2) of IRPR;
- (d) a person who seeks to enter Canada for the purpose of making a claim for refugee protection;
- (e) a protected person;
- (f) a person or any person in a class of persons whose presence in Canada, as determined by the Minister of Foreign Affairs, the Minister of Citizenship and Immigration or the Minister of Public Safety, is in the national interest.

These persons are still, however, prohibited from participating in, facilitating or traveling to a prohibited assembly after entering Canada.

Exemption – Public Assembly

The regulations specify that the following persons are not in contravention of the prohibition of travel to, or within an area where a prohibited assembly is held, or for causing a minor to do so:

- a person who, within the assembly area, resides, works or is moving through that area for reasons other than to participate in or facilitate the assembly;
- a person who, within the assembly area, is acting with a peace officer's permission or the permission of the Minister of Public Safety and Emergency Preparedness;
- a peace officer; or

- an employee or agent of the government of Canada or a province who is acting in the execution of their duties.

Additional Information

CBSA officials are reminded that all other inadmissibility categories, as well as travel prohibitions pursuant to *Quarantine Act* OICs, are still applicable. For example, foreign nationals who are not otherwise exempt are still prohibited from entry to Canada if they do not meet the requirements of a fully vaccinated person.

This means that all conditions imposed on foreign nationals are in addition to ones imposed pursuant to OICs related to the *Quarantine Act* (i.e., COVID-19 conditions to comply with *the Quarantine Act*).

Reporting

Regional management at the POE and Inland Enforcement Operations are required to report on the CBSA's encounters with persons subject to enforcement pursuant to these regulations.

POE management will report, via the single reporting tool (SRT), all cases of Direct Back or Allowed to Leave in a similar fashion to enhanced vigilance SRT reporting.

Inland Enforcement Operations will report, via the SRT, all cases of police referrals of foreign nationals who are arrested and/or convicted of an offence for contravening the *Emergencies Act* in Canada.

- Inland reporting should provide details on the CBSA's response to the referral and steps taken by officers (e.g., 44(1) report, detention, removal).

Contact Information:

Questions related to the POE examination, Direct Back and Allowed to Leave options should be sent to the regional Corporate, Programs and Integration Management Divisions, which (if required) will then send an email to the Operational Guidance Division's generic inbox: ops_travellers-voyageurs@cbsa-asfc.gc.ca

Questions related to the enforcement provisions (A44 reports, Minister's Delegate review, IRPA arrest/detention, etc.) should be sent to the regional Corporate, Programs and Integration Management Divisions, which (if required) will then send an email to the: [CBSA-ASFC Investigations-Programs](#)

Approved by:

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Effective Date: 2022-02-15

Updated: 2022-02-19

Additional bulletins:

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